

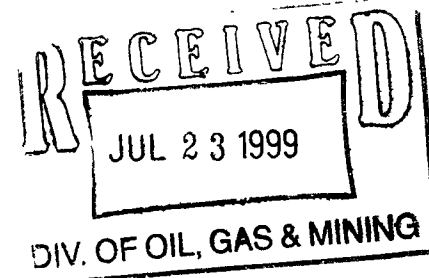
**United States Department of the Interior****BUREAU OF LAND MANAGEMENT**

Utah State Office  
P.O. Box 45155  
Salt Lake City, UT 84145-0155

m/045/049

IN REPLY REFER TO  
3809  
(UT-931)

JUL 22 1999

**CERTIFIED MAIL-Return Receipt Requested**

Mr. William D. Moeller, President	:	3809 Plan of Operations
Clifton Mining Company	:	Appeal
70 West Canyon Crest Road, Suite D	:	
Alpine, UT 84004	:	

**Decision****Affirmed in Part, Remanded in Part**

On May 26, 1999, you timely filed a notice of appeal of the April 27, 1999, decision of the Salt Lake Field Manager regarding your plan of operations. We will address each of the statement of reasons in your appeal in the order presented.

**Stipulations 1-3. Remanded.** We will remand the case file to the Salt Lake Field Office for reconsideration of these stipulations. The Salt Lake Field Office was correct in asking for the data to determine whether or not there was an acid rock drainage problem. However, it is not clear from the case file that this question was resolved. Samples were taken of the tailings to determine if the existing tailings presented an acid rock drainage concern. A letter from Dan Proctor, Clifton Mining Company's Chief Geologist, received August 25, 1997, states, "Presently with over 450,000 tons of oxide ores in reserves (Behre Dolbear, 1997), mining is expected for at least seven years at 200 tons per day. However, sulphide ores will eventually be encountered at and below the water table. These high sulphide ores will be treated differently from the present oxide material in order to attain the highest quality concentrates and clean acceptable tails." The plan of operations did not address how these sulphide ores will be identified and treated differently. A sampling program of the ores to be processed at this mill will have to be developed by Clifton Mining Company for Salt Lake Field Office's review.

**Stipulation 6. Remanded.** Normally, tailings are not used to assist in the reclamation of a mill site. You are correct in your statement that the Division of Water Quality feels that the tailings are inert and, therefore, these tailings can be used in reclamation of the site mill or surrounding area. However, they were not aware of the above statement by your Chief Geologist.

In addition, we are concerned that the list of chemicals provided by Clifton Mining Company did not include cyanide, yet 4-5 barrels have been stored at the site for 15-20 years per a conversation with Bob Holladay, your company representative, on June 30, 1999. A thorough review of your milling process and chemicals used must be made by all responsible agencies in order to determine whether or not the tailings can and should be used for reclamation. We are, therefore, remanding this stipulation to the Salt Lake Field Office for reconsideration to determine whether or not the tailings contain sulfide minerals. We recommend that Clifton Mining Company meet with all agencies involved with the permitting of your mill, i.e., Division of Oil, Gas and Mining, Division of Water Quality, and Bureau of Land Management (BLM) to finally resolve the discrepancies/concerns each agency has with your plan of operations.

**Stipulation 9. Remanded.** This stipulation addresses the storage of chemicals above 5,300 feet to eliminate any potential for discharge into the groundwater. However, the stipulation should address the appropriate storage of the chemicals at the mill site in accordance with the individual Material Safety Data Sheet for that particular chemical. In addition, mill chemicals should be stored in the mill or the storage building near the mill. It is inappropriate to store chemicals out in the open air and subject them to the elements. Storage at one of these facilities will also ensure that the chemicals are stored out of the alluvial flood plain. In addition, unmarked barrels containing unknown substances must be sampled, correctly labeled, and stored or disposed of properly.

**Stipulation 10. Remanded.** Stipulation number 10 states that Clifton cannot discharge process-water onto or into the ground. Discussions with the Division of Water Quality indicate that the water system at the mill is a closed system with additional make-up water required only to keep the volume of water constant. The Division of Water Quality also indicates that they reviewed the list of chemicals to be used at this site and determined they were harmless to the environment and that a discharge permit is not required for the proposed operation.

However, based on what Clifton submitted to the BLM, there appears to be a water balance problem. The proposed operation, as understood by the Salt Lake Field Office, is supposed to be a closed system with a requirement of 2,000 gallons of make-up water per hour when the mill is operating. From the case file it is not clear if you own or lease the water right listed as C.H. Wilson's water right. Depending on whether or not you own or lease the entire right will determine the volume of water you are entitled to use. A copy of the lease agreement with C.H. Wilson or proof of purchase of this water right must be provided to BLM. If you have purchased this water right, you need to update the title with the Division of Water Rights. In addition, you need to review the use of the water. Since the water is being used for a mill instead of for the mining of tungsten, the use must also be updated.

If you have obtained C. H. Wilson's water right, then you are entitled to .0330 cfs which equates to appropriately 15 g.p.m. This only entitles Clifton Mining Company to approximately 900 gallons of make-up water per hour. In addition to the concern about the amount of water needed for the mill operation, the existing pond is not large enough to hold the amount of water required by the mill to minimize the amount of make-up water required to only 2,000 gallons per hour.

A larger pond than what exists on site would have to be constructed. We are, therefore, remanding this stipulation to the Salt Lake Field Office to obtain the necessary information from Clifton Mining Company to resolve the water balance concern. You may find it necessary to redesign your mill to accommodate a lower amount of water use since you are entitled only to .033 cfs.

**Stipulation 12 & 17. Remanded.** This stipulation requires the operator to demonstrate what the normal rate of flow is at Cane Springs. According to the Division of Water Rights, a water right is not issued unless the spring will provide enough water for each water right issued. In addition, the water right user is entitled only to the amount of water specified by the water right. Therefore, Clifton Mining Company is entitled only to .0330 cfs if the water right you leased or own is water right 18-68 and BLM is entitled only to .0090 cfs (water right 18-323). The case file is not clear which water right is yours. As stated above, you need to provide the Salt Lake Field Office a copy of your water right lease agreement or proof of purchase. In addition, if there is a concern about whether or not the Cane Springs can accommodate both the Clifton Mining Company and BLM water right amounts then it is a joint responsibility to monitor the spring to ensure both uses are only taking the amount of water each is entitled to. Therefore, this stipulation is remanded to the Salt Lake Field Office to determine whether it is necessary for BLM and Clifton Mining Company to monitor the spring to see if there is sufficient flow to satisfy both parties' water rights.

**Stipulation 14. Remanded.** This stipulation needs to be clarified by the Salt Lake Field Office. An above-ground fuel tank must be surrounded by an earthen berm. The earthen berm must be constructed so that it will contain 110 percent of the volume of the tank contents. Other chemical storage is addressed in Stipulation number 9; therefore, the remainder of this stipulation is redundant. To clarify, all chemicals on site must be properly labeled, stored out of the elements in accordance with their respective MSDS sheet, and stored in a secure building/facility.

**Stipulation 15. Affirmed.** It is BLM's standard practice to ensure that hazardous materials generated at a mine site be properly disposed. If hazardous wastes are generated by the operation then this stipulation would apply to you. An example of potential hazardous waste that may be generated by your operation is the carbon used in the cyanide. The carbon would have to be disposed of at a hazardous waste facility or disposed of by the company that sold you the activated carbon. Please keep in mind that car batteries and nickel cadmium batteries are considered hazardous waste and, therefore, must be recycled or disposed properly.

**Stipulation 18. Affirmed.** Our regulations require that all operations, notices, plans of operations and casual use comply with all pertinent Federal and State laws (43 CFR 3809.2-2). Subject to resolution of those stipulations remanded in this decision, additional permits may be required. A copy of your water right lease agreement or proof of purchase is required.

**Stipulation 19. Remanded.** The issue of whether or not sulfide minerals are present in the ore being processed at the mill has not been resolved. The Salt Lake Field Office must obtain this information from Clifton Mining Company. If sulfide minerals are present, an appropriate monitoring mechanism must be in place in order to ensure the tailings will not create an acid rock drainage problem on public lands. In addition, the volume of tailings to be produced by the mill needs to be addressed in your plan of operations. This is important in order to determine if the area of proposed disturbance is large enough to accommodate all the tailings.

**Stipulation 23. Remanded.** The Salt Lake Field Office failed to address the requirements for you to comply with 43 CFR 3715. The Salt Lake Field Office must require that you provide all the information required in 43 CFR 3715.3-2.

The information you are required under 3715.3-2 to submit is: a detailed map that identifies the site and the placement of the fence and a written description of the proposed occupancy that describes in detail (a) How the proposed occupancy is reasonably incident; (b) How the proposed occupancy meets the conditions specified in CFR 43 3715.2 and 3715.2-1; (c) Where you will place temporary or permanent structures for occupancy; (d) The location of and reason you need enclosures, fences, gates, and signs intended to exclude the general public; (e) The location of reasonable public passage or access routes through or around the area to adjacent public lands and (f) The estimated period of use of the structures, enclosures, fences, gates, and signs as well as the schedule for removal and reclamation when the operations end. Some of this information has been provided by Clifton Mining Company. We recommend that you work with the Salt Lake Field Office to determine what additional information is required to satisfy the above requirements of the regulations. Then the Salt Lake Field Office will have to make a determination whether fencing of the mill area is appropriate and that all Federal, State, and local mining reclamation and waste disposal permits approvals and other authorizations have been obtained by Clifton Mining Company.

**Your "Added Note." Remanded.** In response to your section entitled "Added Note," you have requested that a detailed accounting of the uses of the proposed \$32,000.00 reclamation bond be delivered to Clifton and that Clifton be given more than 30 days to raise such funds. The Salt Lake Field Office determined that a reclamation bond was required. On January 2, 1998, Clifton Mining Company's Chief Geologist submitted a bond calculation to Salt Lake Field Office. The estimated bond amount necessary to reclaim all proposed disturbances associated with this mill site was \$27,036.00. BLM must add an 18 percent administrative fee to this bond amount since we would have to contract the work if you should default and the bond would have to be used to reclaim the site. The Salt Lake Field Office used a 22 percent administrative fee. This is remanded to the Salt Lake Field Office for recalculation of their bond amount. A bond must be submitted prior to any additional work on the ground. Since the mill is already constructed, a bond in the full amount is required prior to restarting the mill. If posting of the bond takes longer than 30 days, then the mill operation cannot commence until the full bond amount is posted. If a bond is posted with the State for the full amount of the BLM estimate, this will satisfy this requirement.

With respect to your concern of the treatment you have received from BLM, we would be happy to meet with you to discuss specifics. Please arrange such a meeting with Terry Snyder at (801) 539-4026.

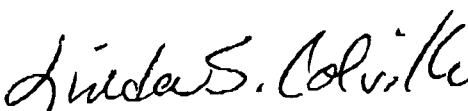
In addition, a field examination of the mill site was conducted by this office on June 30, 1999, in order to respond to this appeal. As a result of this examination, we are remanding the case file to the Salt Lake Field Office to add a stipulation to address the clean-up of the mill site. There were unmarked barrels containing unknown substances on the site, an inoperable washing machine, inoperable mining equipment (i.e., trommel, etc.) scrap metal, barrels, tanks, etc. The mill site must be cleaned up and maintained in a safe and clean condition (see 43 CFR 3809.3-5).

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993)) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellants' success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

  
for Sally Wisely  
State Director

Enclosure

Form 1842-1

cc: DOGM (Tom Munson/Wayne Hedberg)  
Division of Water Quality (Lyle Stott)

Form 1842-1  
(February 1985)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL . . . . Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.
2. WHERE TO FILE  
NOTICE OF APPEAL . . . . State Director, Utah  
Bureau of Land Management  
Utah State Office  
P.O. Box 45155  
Salt Lake City, Utah 84145-0155  
  
SOLICITOR  
ALSO COPY TO . . . . Field Solicitor  
Department of the Interior  
Federal Building, Room 6201  
Salt Lake City, Utah 84138
3. STATEMENT OF REASONS . . . Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.  
  
SOLICITOR  
ALSO COPY TO . . . . Field Solicitor  
Department of the Interior  
Federal Building, Room 6201  
Salt Lake City, Utah 84138
4. ADVERSE PARTIES . . . . Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the *Statement of Reasons*, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
5. PROOF OF SERVICE . . . . Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

*Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.*

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a)).

## SUBPART 1821.2--OFFICE HOURS; TIME AND PLACE FOR FILING

Sec. 1821.2-1 *Office hours of State Offices.* (a) State Offices and the Washington Office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the State Offices and the Washington Office are open to the public for the filing of documents and inspection of records are from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

Sec. 1821.2-2(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the State Office or the Washington Office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation, or decision to be filed within a stated period, the last day of which falls on a day the State Office or the Washington Office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

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